

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1377-MN-JLH

JURY TRIAL DEMANDED

MASIMO CORPORATION,

Counter-Claimant,

v.

APPLE INC.,

Counter-Defendant.

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1378-MN-JLH

JURY TRIAL DEMANDED

MASIMO CORPORATION and
CERCACOR LABORATORIES, INC.,

Counter-Claimants,

v.

APPLE INC.,

Counter-Defendant.

**JOINT MOTION FOR A TELECONFERENCE TO
RESOLVE DISCOVERY DISPUTES**

Pursuant to Paragraph 8(g) of the Scheduling Order (D.I. 103, C.A. No. 22-1377; D.I. 92, C.A. No. 22-1378), Plaintiff Apple Inc., Defendant Masimo Corporation, Defendant Sound United, LLC, Counterclaimant Cercacor Laboratories, Inc., respectfully move to schedule a teleconference to address outstanding disputes regarding the following discovery issue:

- Whether the Court should enter a protective order precluding a deposition of Apple's Chief IP Counsel Jeffrey Myers.¹

Pursuant to the Court's November 13, 2023 Order (D.I. 405, C.A. No. 22-1377; D.I. 426, C.A. No. 22-1378) requiring conferral in person in Delaware and attended on each side by both Delaware counsel and lead counsel who will be trying the case(s), the following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in an in-person conferral in Wilmington, Delaware on the following date: November 22, 2023.

Delaware Counsel:
For Apple: Bindu A. Palapura
For Masimo: Megan C. Haney

Lead Counsel:
For Apple: John Desmarais
For Masimo: Joe Re

The parties are available for a teleconference on January 2, 3, and 16.

Other than the dispute referenced above, the parties resolved all other disputes that were

¹ The parties briefed this issue and it was scheduled for a hearing on November 14 before it was taken off calendar. D.I. 416, 419, 423, 426. Apple requests the opportunity to submit additional briefing limited to 2 pages per side on this dispute to address, and provide the Court with, significant new evidence that did not exist when the parties raised this dispute in November. Specifically, Masimo deposed each outside counsel law firm that prosecuted the relevant Apple patents and they testified Mr. Myers was not involved in prosecution of those patents. Masimo does not believe additional briefing is necessary because the parties fully briefed this issue and Apple's "new evidence" is transcripts from third-party deponents who could not testify as to Myers' intent.

the subject of the November 22, 2023, meet and confer. *See* 1377 D.I. 399, 403; 1378 D.I. 420, 424.

POTTER ANDERSON & CORROON LLP

By: /s/ Bindu A. Palapura

David E. Moore (#3983)

Bindu A. Palapura (#5370)

Andrew M. Moshos (#6685)

Hercules Plaza, 6th Floor

1313 N. Market Street

Wilmington, DE 19801

Tel: (302) 984-6000

dmoore@potteranderson.com

bpalapura@potteranderson.com

amoshos@potteranderson.com

*Attorneys for Plaintiff/Counter-Defendant
Apple Inc.*

Dated: December 21, 2023

11226224 / 12209.00051

PHILLIPS MCLAUGHLIN & HALL, P.A.

By: /s/ John C. Philips, Jr.

John C. Phillips, Jr. (#110)

Megan C. Haney (#5016)

1200 North Broom Street

Wilmington, Delaware 19806

(302) 655-4200

jcp@pmhdelaw.com

mch@pmhdelaw.com

*Attorneys for Defendants Masimo Corporation
and Sound United, LLC, Counterclaimant
Cercacor Laboratories, Inc.,*